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**Part IV**

**Department of the  
Interior**

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**Bureau of Indian Affairs**

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**25 CFR Part 163  
General Forestry Regulations; Proposed  
Rule**

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 163**

RIN 1076-AC44

**General Forestry Regulations****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Proposed rule.

**SUMMARY:** The purpose of this rulemaking action is to revise the "General Forestry Regulations" to implement the provisions of the National Indian Forest Resources Management Act.

The law reaffirmed many aspects of the existing Indian forestry program and established new program direction for cooperative agreements between the Department of the Interior and Indian tribes, forest trespass, Secretarial recognition of tribal laws pertaining to Indian forest lands, Indian forestry program assessments, Indian forest land assistance accounts, tribal forestry programs, Alaska Native technical assistance and forestry education assistance.

The proposed rule establishes uniform Indian forestry program operating policy that complies with the National Indian Forest Resources Management Act.

**DATES:** Comments must be received on or March 28, 1994.

**ADDRESSES:** Mail or hand deliver comments to: Mr. Jim Stires, Billings Area Office, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana; or Mr. Jim Howe, Department of the Interior, Bureau of Indian Affairs, Division of Forestry, 1849 C Street, NW., Mail Stop 4545 MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Stires, Bureau of Indian Affairs, Billings Area Office, Branch of Forestry, telephone (406) 657-6358.

**SUPPLEMENTARY INFORMATION:** The proposed rule has been developed with full participation and consultation of the affected Indian and Alaska Native public. Prior to drafting the proposed rule, public scoping meetings were announced and held in Minneapolis, Portland, Phoenix and Anchorage in February and March, 1991. Input from those meetings was considered and addressed in the proposed rule. Additional consultation with the affected public was accomplished by maintaining close communication with the Intertribal Timber Council (ITC) during the rule drafting process and

including ITC members on the project steering committee and project in working groups.

This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 208 DM 8.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the addresses section of this document.

This document has been reviewed under Executive Order 12866. It will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Mr. Jim Stires, Forester, in the Billings Area Office, Bureau of Indian Affairs, Branch of Forestry, Billings, Montana.

**List of Subjects in 25 CFR Part 163**

Forests and forest products; Indian—lands; Education.

For the reasons set forth in the preamble, part 163 of title 25 of the Code of Federal Regulations is proposed to be revised as set forth below.

**PART 163—GENERAL FOREST REGULATIONS****Subpart A—General Provisions**

Sec.

- 163.1 Definitions.
- 163.2 Information collection.
- 163.3 Scope and objectives.
- 163.4 Secretarial recognition of tribal laws.

**Subpart B—Forest Management and Operations**

- 163.10 Management of Indian forest land.
- 163.11 Forest management planning and sustained yield management.
- 163.12 Harvesting restrictions.
- 163.13 Indian tribal forest enterprise operations.
- 163.14 Sale of forest products.
- 163.15 Advertisement of sales.
- 163.16 Forest product sales without advertisement.
- 163.17 Deposit with bid.

- 163.18 Acceptance and rejection of bids.
- 163.19 Contracts for the sale of forest products.
- 163.20 Execution and approval of contracts.
- 163.21 Bonds required.
- 163.22 Payment for forest products.
- 163.23 Advance payment for timber products.
- 163.24 Duration of timber contracts.
- 163.25 Forest management deductions.
- 163.26 Forest product harvesting permits.
- 163.27 Free-use harvesting without permits.
- 163.28 Fire management measures.
- 163.29 Trespass.
- 163.30 Revocable road use and construction permits for removal of commercial forest products.
- 163.31 Insect and disease control.
- 163.32 Forest development.
- 163.33 Administrative appeals.
- 163.34 Environmental compliance.
- 163.35 Indian forest land assistance account.
- 163.36 Tribal forestry program financial support.
- 163.37 Forest management research.

**Subpart C—Forestry Education, Education Assistance, Recruitment and Training**

- 163.40 Indian and Alaska Native forestry education assistance.
- 163.41 Postgraduation recruitment, continuing education and training programs.
- 163.42 Obligated service and breach of contract.

**Subpart D—Alaska Native Technical Assistance Program**

- 163.60 Purpose and scope.
- 163.61 Evaluation committee.
- 163.62 Annual funding needs assessment and rating.
- 163.63 Contract, grant, or agreement application and award process.

**Subpart E—Cooperative Agreements**

- 163.70 Purpose of agreements.
- 163.71 Agreement funding.
- 163.72 Supervisory relationship.

**Subpart F—Program Assessment**

- 163.80 Periodic assessment report.
- 163.81 Assessment guidelines.
- 163.82 Annual status report.
- 163.83 Assistance from the Secretary of Agriculture.

**Authority:** 25 U.S.C. 2, 5, 9, 13, 406, 407, 413, 466; and 3101-3120.

**Subpart A—General Provisions****§ 163.1 Definitions.**

*Advance deposits* means, in Timber Contract for the Sale of Estimated Volumes, contract-required deposits in advance of cutting which the purchaser furnishes to maintain an operating balance against which the value of timber to be cut will be charged.

*Advance payments* means, in Timber Contract for the Sale of Estimated Volumes, non-refundable partial payments of the estimated value of the timber to be cut. Payments are furnished

within 30 days of contract approval and prior to cutting. Advance payments are normally 25 percent of the estimated value of the forest products on each allotment. Advance payments may be required for tribal land.

*Alaska Native* means native as defined in section 3(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1604).

*ANCSA corporation* means both profit and non-profit corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1604).

*Approval* means authorization by the Secretary, Area Director, Superintendent, tribe or individual Indian in accordance with appropriate delegations of authority.

*Approving officer* means the officer approving instruments of sale for forest products or his/her authorized representative.

*Authorized representative* means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority.

*Authorized tribal representative* means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority from an Indian tribe.

*Beneficial owner* means an individual or entity who holds an ownership interest in Indian land.

*Bid deposit* means, in Timber Contract for the Sale of Estimated Volumes or in Timber Contract for the Sale of Predetermined Volumes, a deposit with bid furnished by prospective purchasers. At contract execution, the bid deposit of the successful bidder becomes a portion of the contract required advance deposit in estimated volume contracts or an installment payment in predetermined volume contracts.

*Commercial forest land* means forest land that is producing or capable of producing crops of marketable forest products and is administratively available for intensive management and sustained production.

*Forest or forest land* means an ecosystem at least one acre in size, including timberland and woodland, which: Is characterized by a more or less dense and extensive tree cover; contains, or once contained, at least ten percent tree crown cover, and is not developed or planned for exclusive non-forest resource use.

*Forest land management activities* means all activities performed in the management of Indian forest land including the improvement and maintenance of extended season primary and secondary Indian forest land road systems.

*Forest management deduction* means a percentage of the gross proceeds from the sales of forest products harvested from Indian land which is collected by the Secretary pursuant to 25 U.S.C. 413 to cover in whole or in part the cost of managing and protecting such Indian forest lands.

*Forest management plan* means the principle document, approved by the Secretary, reflecting and consistent with an integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods assuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include: standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan.

*Forest products* means marketable products extracted from Indian forests, such as: Timber; timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, and herbs; other marketable material; and gravel which is extracted from, and utilized on, Indian forest land.

*Forest resources* means all the benefits derived from Indian forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest land.

*Forester intern* means an Indian or Alaska Native who: Is employed as a forestry or forestry-related technician with the Bureau of Indian Affairs, an Indian tribe, or tribal forest-related enterprise; is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields; and is appointed to one of the Forester Intern positions established pursuant to § 163.40(b).

*Forestry-related field or forestry-related curriculum* means a renewable natural resource management field necessary to manage Indian forest land and other professionally recognized fields as approved by the education committee established pursuant to § 163.40(a)(1).

*Indian* means a member of an Indian tribe.

*Indian enterprise* means an enterprise which is designated as such by the Secretary or tribe.

*Indian forest land* means Indian land, including commercial, non-commercial, productive and non-productive timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification action has been taken.

*Indian land* means land title to which is held by: The United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe; or by an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation.

*Indian tribe or tribe* means any Indian tribe, band, nation, rancheria, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation.

*Installment payments* means, in Timber Contract for the Sale of Predetermined Volumes, scheduled partial payments of the total contract value based on purchaser bid. Payments made are normally not refundable.

*Integrated resource management plan* means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of the natural resources of such tribe's reservation.

*Noncommercial forest land* means forest land that is available for extensive management, but is incapable of producing marketable forest products. Such land may be economically harvested, but the site quality does not warrant significant investment in future crops.

*Productive forest land* means forest land producing or capable of producing marketable forest products that is unavailable for harvest because of administrative restrictions or because access is not practical.

*Reservation* means an Indian reservation established pursuant to treaties, Acts of Congress or Executive Orders and public domain Indian allotments, rancherias, and former Indian reservations in Oklahoma.

*Secretary* means the Secretary of the Interior or his or her authorized representative.

**Stumpage rate** means the stumpage value per unit of measure for a forest product.

**Stumpage value** means the value of a forest product prior to extraction from Indian forest land.

**Sustained yield** means the yield of forest products that a forest can produce continuously at a given intensity of management.

**Timberland** means forest land stocked, or capable of being stocked, with tree species that are regionally utilized for lumber, pulpwood, poles or veneer products.

**Trespass** means the removal of forest products from Indian forest land or the severance or injury of forest products on Indian forest land except when authorized by law and applicable Federal or tribal regulations. Trespass includes any damage to forest resources on Indian forest lands resulting from activities under contracts or permits obtained through fraud or material misrepresentation of fact.

**Tribal forest enterprise** means an Indian enterprise that is initiated and organized by a reservation's recognized tribal government.

**Unproductive forest land** means forest land that is not producing or capable of producing marketable forest products and is also unavailable for harvest because of administrative restrictions or because access is not practical.

**Woodland** means forest land not included within the timberland classification, stocked or capable of being stocked, with tree species of such form and size that the wood content is generally marketable within the region for products other than lumber, pulpwood or veneer.

#### § 163.2 Information collection.

The information collection requirements contained in 25 CFR part 163 do not require the approval of the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.*

#### § 163.3 Scope and objectives.

(a) The regulations in this part are applicable to all Indian forest land except as this part may be superseded by legislation.

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives:

(1) The development, maintenance and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection

through the application of sound silvicultural and economic principles to the harvesting of forest products, forestation, timber stand improvement and other forestry practices;

(2) The regulation of Indian forest land through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives;

(3) The regulation of Indian forest land in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) The development of Indian forest land and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) The retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) The management and protection of forest resources to retain the beneficial effects to Indian forest land of regulating water run-off and minimizing soil erosion; and

(7) The maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

#### § 163.4 Secretarial recognition of tribal laws.

Subject to the Secretary's trust responsibilities and unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest land, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest land. Such cooperation does not constitute a waiver of United States sovereign immunity and shall include:

(a) Assistance in the enforcement of such laws;

(b) Provision of notice of such laws to persons or entities undertaking activities on Indian forest land; and

(c) Upon the request of an Indian tribe, the appearance in tribal forums.

### Subpart B—Forest Management and Operations

#### § 163.10 Management of Indian forest land.

(a) The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve objectives enumerated in § 163.3.

#### § 163.11 Forest management planning and sustained yield management.

(a) To further the objectives identified in § 163.3, an appropriate forest management plan shall be prepared and revised as needed. Such documents shall contain a statement describing the manner in which the policies of the tribe and the Secretary will be applied, with a definite plan of silvicultural management, analysis of the short term and long term effects of the plan, and a program of action, including a harvest schedule, for a specified period in the future. Forest management plans shall be based on the principle of sustained yield management and objectives established by the tribe and will require approval of the Secretary.

(b) Forest management planning for Indian forest land shall be carried out through participation in the development and implementation of integrated resource management plans which provide coordination for the comprehensive management of all natural resources on Indian land. If the integrated resource management planning process has not been initiated, or is not ongoing or completed, a stand-alone forest management plan will be prepared.

(c) The harvest of forest products from Indian forest land will be accomplished under the principles of sustained yield management and will not be authorized until practical methods of harvest based on sound economic and silvicultural and other forest management principles have been prescribed. Harvest schedules will be prepared for a specified period of time and updated annually. Such schedules shall support the objectives of the beneficial land owners and the Secretary and shall be directed toward achieving an approximate balance between planned net growth and harvest at the earliest practical time.

#### § 163.12 Harvesting restrictions.

(a) Harvesting timber on commercial forest land will not be permitted unless

provisions for natural and/or artificial forestation of acceptable tree species is included in harvest plans.

(b) Clearing of large contiguous areas will be permitted only on land that, when cleared, will be devoted to a more beneficial use than growing timber crops. This restriction shall not prohibit clearcutting when it is silviculturally good practice to harvest a particular stand of timber by such method and it otherwise conforms with objectives in § 163.3.

#### § 163.13 Indian tribal forest enterprise operations.

Indian tribal forest enterprises may be initiated and organized with consent of the authorized tribal representatives. Such enterprises may contract for the purchase of non-Indian owned forest products. Subject to approval by the Secretary the following actions may be taken:

(a) Authorized tribal enterprises may enter into formal agreements with tribal representatives for the use of tribal forest products, and with individual beneficial Indian owners for their forest products;

(b) Authorized officials of tribal enterprises, operating under approved agreements for the use of Indian-owned forest products pursuant to this section, may sell the forest products produced according to generally accepted trade practices;

(c) With the consent of the Indian owners, such enterprises may, without advertisement, contract for the purchase of forest products on Indian land at stumpage rates authorized by the Secretary;

(d) Determination of and payment for stumpage and/or products utilized by such enterprises will be authorized in accordance with § 163.22. However, the Secretary may issue special instructions for payment by methods other than those in § 163.22; and

(e) Performance bonds may or may not be required in connection with operations on Indian land by such enterprises as determined by the Secretary.

#### § 163.14 Sale of forest products.

(a) Consistent with the economic objectives of the tribe and with the consent of the Secretary and authorized tribal representatives, open market sales of Indian forest products may be authorized. Such sales require consent of the authorized representatives of the tribe for the sale of tribal forest products, and the owners of a majority Indian interest on individually owned lands. Open market sales of forest products from Indian land located off

reservations will be permitted with the consent of the Secretary and majority Indian interest of the beneficial owner(s).

(b) On Indian forest land not formally designated for retention in its natural state, the Secretary may sell the forest products without the consent of the owner(s) when in his or her judgment such action is necessary to prevent loss of value resulting from fire, insects, diseases, windthrow or other catastrophes.

(c) Unless otherwise authorized by the Secretary, each sale of forest products having an estimated stumpage value exceeding \$15,000 will not be approved until:

(1) An examination of the forest products to be sold has been made by a forest officer; and

(2) A report setting forth all pertinent information has been submitted to the approving officer as provided in § 163.20.

(d) With the approval of the Secretary, authorized Indian owners who have been duly apprised as to the value of the forest products to be sold, may sell or transfer forest products for less than the appraised value:

(e) Except as provided in § 163.14(d), in all such sales, the forest products shall be appraised and sold at stumpage rates not less than those established by the Secretary.

#### § 163.15 Advertisement of sales.

Except as provided in §§ 163.13, 163.14, 163.16, and 163.26, sales of forest products shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the instrument of sale. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian forest products to Indian forest enterprises, members of the tribe, or may grant to Indian forest enterprises and/or members of the tribe who submitted bids the right to meet the higher bid of a non-member. If the estimated stumpage value of the forest products offered does not exceed \$15,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds \$15,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the forest products are situated. If the estimated stumpage value does not exceed \$50,000, the advertisement shall be made for not less than 15 days; if the estimated stumpage value exceeds \$50,000 but not \$250,000,

for not less than 30 days; and if the estimated stumpage value exceeds \$250,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emergencies such as fire, insect attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed period.

(c) If no instrument of sale is executed after such advertisement, the approving officer may, within one year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such forest products. The sale will be made upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

#### § 163.16 Forest product sales without advertisement.

(a) Sales of forest products may be made without advertisement to Indians or non-Indians with the consent of the authorized tribal representatives for tribal forest products or with the consent of the beneficial owners of a majority Indian interest of individually owned Indian land, and the approval of the Secretary when:

(1) Forest products are to be cut in conjunction with the granting of a right-of-way;

(2) Granting an authorized occupancy;

(3) Tribal forest products are to be purchased by an Indian tribal forest enterprise;

(4) It is impractical to secure competition by formal advertising procedures;

(5) It must be cut to protect the forest from injury; or

(6) Otherwise specifically authorized by law.

(b) The approving officer shall establish a documented record of each negotiated transaction. This will include:

(1) A written determination and finding that the transaction is a type allowing use of negotiation procedures;

(2) The extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and

(3) A statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

#### § 163.17 Deposit with bid.

(a) A deposit shall be made with each proposal for the purchase of Indian forest products. Such deposits shall be at least:

(1) Ten (10) percent if the appraised stumpage value is less than \$100,000

and in any event not less than \$1,000 or full value whichever is less;

(2) Five (5) percent if the appraised stumpage value is \$100,000 to \$250,000 but in any event not less than \$10,000; and

(3) Three (3) percent if the appraised stumpage value exceeds \$250,000 but in any event not less than \$12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, postal money order, or irrevocable letter-of-credit, drawn payable as specified in the advertisement, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit a written request to have their bids considered for acceptance will be retained pending acceptance or rejection of the bids. All other deposits will be returned following the opening and posting of bids.

(d) The deposit of the successful bidder will be forfeited and distributed as damages to the beneficial owners if the bidder does not:

(1) Furnish the performance bond required by § 163.21 within the time stipulated in the advertisement for sale of forest products;

(2) Execute the contract; or

(3) Perform the contract.

(e) Forfeiture of a deposit does not limit or waive any further claims for damages available under applicable law or terms of the contract.

(f) In the event of an administrative appeal under 25 CFR part 2, the Secretary may hold such bid deposits in an escrow account pending resolution of the appeal.

#### § 163.18 Acceptance and rejection of bids.

(a) The high bid received in accordance with any advertisement issued under authority of this part shall be accepted, except that the approving officer, having set forth the reason(s) in writing, shall have the right to reject the high bid if:

(1) The high bidder is considered unqualified to fulfill the contractual requirement of the advertisement; or

(2) There are reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids; or

(2) Acceptance of the offer of another bidder who, at bid opening, makes written request that their bid and bid deposit be held pending a bid acceptance.

(c) The officer authorized to accept the bid shall have the discretion to waive minor technical defects in advertisements and proposals, such as

typographical errors and misplaced entries.

#### § 163.19 Contracts for the sale of forest products.

(a) In sales of forest products with an appraised stumpage value exceeding \$15,000, the contract forms approved by the Secretary must be used unless a special form for a particular sale or class of sales is approved by the Secretary.

(b) Unless otherwise directed, the contracts for forest products from individually-owned Indian land will be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. Upon the request of the tribe, the contracts for tribal forest products may require that the proceeds be paid promptly and directly into a bank depository account designated by such tribe, or by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent.

(c) By mutual agreement of the parties to a contract, contracts may be extended, modified, or assigned subject to approval by the approving officer, and may be terminated by the approving officer upon completion or by mutual agreement.

#### § 163.20 Execution and approval of contracts.

(a) All contracts for the sale of tribal forest products shall be executed by the authorized tribal representative(s). There shall be included with the contract an affidavit executed by the authorized tribal representative(s) setting forth the resolution or other authority of the governing body of the tribe. Contracts must be approved by the Secretary to be valid.

(b) Contracts for the sale of individually owned forest products shall be executed by the Indian owner(s) or the Secretary acting pursuant to a power of attorney from the Indian owner(s). Contracts must be approved by the Secretary to be valid.

(1) The Secretary may, after consultation with any legally appointed guardian, execute contracts on behalf of minors and Indian owners who are non compos mentis.

(2) The Secretary may execute contracts for those persons whose ownership in a decedent's estate has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary may include such unrestricted interest in a sale of the trust or restricted

interests in the timber, pursuant to this part, and perform any functions required of him/her by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the forest management deductions from such payments.

(4) When consent of only a majority interest has been obtained, the Secretary may execute the sale on behalf of all owners to fulfill responsibilities to the beneficiaries of the trust. In such event, the contract file must contain evidence of the effort to obtain consent of all owners. When an individual cannot be located, the Secretary, after a reasonable and diligent search and the giving of notice by publication, may sign a power of attorney consenting to the sale for particular interests. For Indian forest land containing undivided restricted and unrestricted interests, only the restricted interests are considered in determining if a majority interest has been obtained.

#### § 163.21 Bonds required.

(a) Performance bonds will be required in connection with all sales of forest products, except they may or may not be required, as determined by the approving officer, in connection with the use of forest products by Indian tribal forest enterprises pursuant to § 163.13 or in timber cutting permits issued pursuant to § 163.26.

(1) In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed \$15,000, the bond shall be at least 20 percent of the estimated stumpage value.

(2) In sales in which the estimated stumpage value exceeds \$15,000 but is not over \$150,000, the bond shall be at least 15 percent of the estimated stumpage value but not less than \$3,000.

(3) In sales in which the estimated stumpage value exceeds \$150,000, but is not over \$350,000, the bond shall be at least 10 percent of the estimated stumpage value but not less than \$22,500.

(4) In sales in which the estimated stumpage value exceeds \$350,000, the bond shall be at least 5 percent of the estimated stumpage value but not less than \$35,000.

(b) Bonds shall be in a form acceptable to the approving officer and may include:

(1) A corporate surety bond by an acceptable surety company;

(2) A cash bond designating the approving officer to act under a power of attorney;

(3) Negotiable U.S. Government securities supported by appropriate power of attorney; or

(4) An irrevocable letter of credit.

**§ 163.22 Payment for forest products.**

(a) The basis of volume determination for forest products sold shall be the Scribner Decimal C log rules, cubic volume, lineal measurement, piece count, weight, or such other form of measurement as the Secretary may authorize for use. With the exception of Indian tribal forest enterprises pursuant to § 163.13, payment for forest products will be required in advance of cutting for timber, or removal for other forest products.

(b) Upon the request of an Indian tribe, the Secretary may provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit, or other harvest sale document to make advanced deposits, or direct payments of the gross proceeds of such forest products, less any amounts segregated as forest management deductions pursuant to § 163.25, into accounts designated by such Indian tribe. Such accounts may be in one or more of the following formats:

(1) Escrow accounts at a tribally designated financial institution for receiving deposits with bids and advanced deposits from which direct disbursements for timber harvested shall be made to tribes and forest management deductions accounts; or

(2) Tribal depository accounts for receiving advanced payments, installment payments, payments from Indian tribal forest enterprises, and/or disbursements from advance deposit accounts or escrow accounts.

(c) The format must allow the Secretary to maintain trust responsibility through written verification that all required deposits, payments, and disbursements have been made.

(d) Terms and conditions for payment of forest products under lump sum (predetermined volume) sales shall be specified in forest product contract documents.

**§ 163.23 Advance payment for timber products.**

(a) Unless otherwise authorized by the Secretary, and except in the case of lump sum (predetermined volume) sales, contracts for the sale of timber from allotted, trust or restricted Indian forest land shall provide for an advance payment of up to 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting begins.

Additional advance payments may be specified in contracts. However, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from each ownership in a sale exceed 50 percent of the bid stumpage value. Advance payments shall be credited against the timber of each ownership in the sale as the timber is cut and scaled at stumpage rates governing at the time of scaling. Advance payments are not refundable.

(b) Advance payments may be required on tribal land. When required, advance payments will operate the same as provided for in § 163.23(a).

**§ 163.24 Duration of timber contracts.**

After the effective date of a forest product contract, unless otherwise authorized by the Secretary, the maximum period which shall be allowed for harvesting the estimated volume of timber purchased, shall be five years.

**§ 163.25 Forest management deductions.**

(a) Pursuant to the provisions of 25 U.S.C. 413 and 25 U.S.C. 3105, a forest management deduction shall be withheld from the gross proceeds of sales of forest products harvested from Indian forest land as described in this section.

(b) Gross proceeds shall mean the value in money or money's worth of consideration furnished by the purchaser of forest products purchased under a contract, permit, or other document for the sale of forest products.

(c) Forest management deductions shall not be withheld where:

(1) The total consideration furnished under a contract, permit or other document for the sale of forest products is less than \$5,001; or

(2) The monies collected are derived from trespass, defaulted contracts or other civil judgments.

(d) Except as provided in § 163.25(e), the amount of the forest management deduction shall not exceed the lesser amount of ten percent (10%) of the gross proceeds or, the actual percentage in effect on November 28, 1990.

(e) The Secretary shall increase the forest management deduction percentage for Indian forest land upon receipt of a written request from a tribe supported by a resolution executed by the authorized tribal representatives. At the request of the authorized tribal representatives and at the discretion of the Secretary the forest management deduction percentage may be decreased to not less than one percent (1%) or the

requirement for collection may be waived.

(f) Forest management deductions are to be utilized to perform forest land management activities in accordance with an approved expenditure plan. Expenditure plans shall describe the forest land management activities anticipated to be undertaken, establish a time period for their completion, summarize anticipated obligations and expenditures, and specify the method through which funds are to be transferred or credited to tribal accounts from special deposit accounts established to hold amounts withheld as forest management deductions. Any forest management deductions that have not been incorporated into an approved expenditure plan by the end of the fiscal year following the fiscal year in which the deductions are withheld, shall be collected into the general funds of the United States Treasury pursuant to 25 U.S.C. 413.

(1) For Indian forest lands located on an Indian reservation, a written expenditure plan for the use of forest management deductions shall be prepared annually and approved by the authorized tribal representative(s) and the Secretary. The approval of the expenditure plan by the authorized tribal representatives constitutes appropriation of tribal funds for Indian forest land management activities.

Approval of the expenditure plan by the Secretary shall constitute authority for crediting of forest management deductions to tribal account(s). The full amount of any deduction collected by the Secretary plus any income or interest earned thereon shall be available for expenditure according to the approved expenditure plan for the performance of forest land management activities on the reservation from which the forest management deduction is collected.

(2) For Indian forest lands located outside the boundaries of an Indian reservation, forest management deductions shall be handled in a manner similar to that described under § 163.25(f)(1) if the expenditure plan approved by an Indian tribe and the Secretary provides for the conduct of forest land management activities on such lands.

(3) For public domain and Alaska Native allotments held in trust for Indians by the United States, forest management deductions may be utilized to perform forest land management activities on such lands in accordance with an expenditure plan approved by the Secretary.

(g) Forest management deductions withheld pursuant to this section shall



not be available to cover the costs that are paid from funds appropriated for fire suppression or pest control or otherwise offset Federal appropriations for meeting the Federal trust responsibility for management of Indian forest land.

(h) Within one hundred twenty (120) days after the close of the tribal fiscal year, tribes shall submit to the Secretary a written report detailing the actual expenditure of forest management deductions during the past fiscal year. The Secretary shall have the right to inspect accounts, books or other tribal records supporting the report.

(i) Forest management deductions incorporated into an expenditure plan approved by the Secretary shall remain available until expended.

(j) As provided in § 163.25(f) only forest management deductions that have not been incorporated into an approved expenditure plan may be deposited to a U.S. Treasury receipt account. No amount collected as forest management deductions shall be credited to any Federal appropriation. No other forest management deductions or fees derived from Indian forest land shall be collected to be covered into the general funds of the United States Treasury.

#### **§ 163.26 Forest product harvesting permits.**

(a) Except as provided in §§ 163.13 and 163.27, removal of forest products that are not under formal contract, pursuant to § 163.19, shall be under forest product harvesting permit forms approved by the Secretary. Permits will be issued only with the written consent of the Indian owner(s) or the Secretary, for harvest of forest products from Indian forest land, as authorized in § 163.20. To be valid, permits must be approved by the Secretary. Minimum stumpage rates at which forest products may be sold will be set at the time consent to issue the permit is obtained. Payment and bonding requirements will be stipulated in the permit document as appropriate.

(b) Free use harvesting permits issued shall specify species and types of forest products to be removed. It may be stipulated that forest products removed under this authority cannot be sold or exchanged for other goods or services. The estimated value which may be harvested in a fiscal year by any individual under this authority shall not exceed \$5,000. For the purpose of issuance of free use permits, individual shall mean an individual Indian or any organized group of Indians.

(c) Paid permits subject to forest management deductions, as provided in § 163.25, may be issued. Unless otherwise authorized by the Secretary,

the stumpage value which may be harvested under paid permits in a fiscal year by any individual under this authority shall not exceed \$25,000. For the purpose of issuance of paid permits, individual shall mean an individual or any operating entity comprised of more than one individual.

(d) A Special Allotment Timber Harvest Permit may be issued to an Indian having sole beneficial interest in an allotment to harvest and sell designated forest products from his or her allotment. The special permit shall include provision for payment by the Indian of forest management deductions pursuant to § 163.25. Unless waived by the Secretary, the permit shall also require the Indian to make a bond deposit with the Secretary as required by § 163.21. Such bonds will be returned to the Indian upon satisfactory completion of the permit or will be used by the Secretary in his or her discretion for planting or other work to offset damage to the land or the timber caused by failure to comply with the provisions of the permit. As a condition to granting a special permit under authority of this paragraph, the Indian shall be required to provide evidence acceptable to the Secretary that he or she has arranged a bona fide sale of the forest products, on terms that will protect the Indian's interests.

#### **§ 163.27 Free-use harvesting without permits.**

With the consent of the Indian owners and the Secretary, Indians may cut designated types of forest products from Indian forest land without a permit or contract, and without charge. Timber cut under this authority shall be for the Indian's personal use, and shall not be sold or exchanged for other goods or services.

#### **§ 163.28 Fire management measures.**

(a) The Secretary is authorized to maintain facilities and staff, hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation as needed, to maintain an adequate level of readiness to meet normal wildfire protection needs and extinguish forest or range fires on Indian land. No expenses for fighting a fire outside Indian lands may be incurred unless the fire threatens Indian land or unless the expenses are incurred pursuant to an approved cooperative agreement with another protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for fire fighting services that are currently in use by public and private wildfire protection agencies adjacent to Indian reservations

on which a fire occurs, unless there are in effect at the time different rates that have been approved by the Secretary. The Secretary may also enter into reciprocal agreements with any fire organization maintaining protection facilities in the vicinity of Indian reservations or other Indian land for mutual aid in wildfire protection. This section does not apply to the rendering of emergency aid, or agreements for mutual aid in fire protection pursuant to the Act of May 27, 1955 (69 Stat. 66).

(b) The Secretary will conduct a wildfire prevention program to reduce the number of person-caused fires and to prevent damage to natural resources on Indian land.

(c) The Secretary is authorized to expend funds for emergency rehabilitation measures needed to stabilize soil and watershed on Indian land damaged by wildfire.

(d) Upon consultation with the beneficial Indian owners, the Secretary may use fire as a management tool on Indian land to achieve land and/or resource management objectives.

#### **§ 163.29 Trespass.**

(a) Trespassers will be liable for penalties and damages to the enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass.

(1) *Cases in tribal court.* The measure of damages to be applied in cases of timber and related trespass in tribal court will be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, unless Federal law prescribes a different rule. Where tribal law does not supply a measure of damages, the measure shall be that prescribed by the law of the state in which the trespass was committed, unless Federal law prescribes a different measure.

(2) *Cases in Federal court.* The measure of damages to be applied in cases of timber and related trespass in Federal court will be that prescribed by Federal law. In the absence of applicable Federal law, the measure shall be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed and by the law of the state in which it was committed.

(3) Civil penalties for trespass include:

(i) Treble damages, whenever any person, without lawful authority, willfully injures, severs, or carries off from Indian land any tree, timber, or shrub. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence



that the acts were committed willfully, intentionally, and without requisite consent. Treble damages shall be based upon the fair market value of the highest-valued product obtainable from the raw materials involved in the trespass.

(ii) Double damages, whenever a trespasser can prove that the trespass act was casual or involuntary, or that the trespasser had probable cause to believe that the land on which the trespass was committed was his own or that of the person in whose service or by whose direction the act was done. Double damages shall be based upon the fair market value of the highest-valued product obtainable from the raw materials involved in the trespass.

(iii) Payment of costs associated with damage to Indian forest land including, but not limited to, rehabilitation, reforestation, lost future revenue, loss of productivity, and damage to other forest resources.

(iv) Payment of all reasonable costs associated with the enforcement of these trespass regulations beginning with detection and including all processes through the prosecution and collection of the settlement, such as field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.

(b) Payment of civil penalties may involve collection of cash, forfeiture of real and personal property, and garnishment. Any cash or other proceeds realized from forfeiture of equipment or other goods or forest products damaged or taken in the trespass, shall be applied to civil penalties and other expenses incurred by the enforcement agency and the beneficial owner(s) damaged by the trespass. After disposition of real and personal property to pay civil liability penalties and enforcement costs of the trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery of civil penalties, penalty damages collected will be equitably distributed among beneficial owners based on the estimate of damages for the trespass.

(c) Indian beneficial owners who trespass, or are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive damages collected as a civil penalty in consequence of the trespass.

(d) Civil penalties collected under § 163.29(a) shall be treated as proceeds from the sale of forest products from the

Indian forest land upon which the trespass occurred.

(e) When there is reason to believe that Indian forest products are involved in trespass, the agency superintendent or such other representative of the Secretary with responsibility for the reservation may prohibit the removal of such forest products from Indian land or have such forest products seized for safekeeping and use as evidence of trespass. When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under government supervision, the representative of the Secretary with responsibility for the reservation shall immediately notify the owner of the land or the party in possession of the trespass products that such products could be Indian trust property involved in a trespass and that no action to remove or otherwise dispose of such products may be taken unless authorized by the Secretary. The representative of the Secretary shall cause Indian forest products that can be positively identified to be sold where practicable to recover their value for the beneficial Indian owners prior to deterioration.

(f) Whenever an individual authorized to enforce against trespass activity has probable cause to believe that trespass activity has occurred, such individual may seize and take possession of the products and/or equipment involved in the trespass activity. All equipment seized shall be kept in the custody of the enforcement agency for use as evidence unless otherwise ordered by a court of competent jurisdiction. The representative of the Secretary simultaneously with any seizure shall give written notice of the seizure to the party in possession of the products and/or equipment involved in the apparent trespass activity. Such notice shall include the statement that the seizure may be administratively appealed pursuant to part 2 of this Title.

(g) The representative of the Secretary or the authorized tribal representative will promptly determine if a trespass has occurred. The appropriate representative shall issue an official notice of trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The notice will inform the trespasser, buyer, or processor, that the Bureau of Indian Affairs has determined that a trespass has occurred, of the basis for the determination, and of the seizure of forest products and/or equipment involved in trespass and that the determination and the seizure may be

administratively appealed as actions of the Bureau of Indian Affairs under part 2 of this Title. Said representative shall post a trespass notice on the property. Any forest product seized under these procedures may be sold or otherwise disposed of as determined appropriate by the Bureau of Indian Affairs and such action shall not be stayed by the filing of an administrative appeal. The Secretary's and tribe's representatives will be jointly responsible to coordinate prosecution of trespass actions and involve the appropriate officers of the Bureau of Indian Affairs and the tribe(s). Except where the Secretary defers to tribal prosecution or the tribe chooses not to be so bound, said representatives will determine the appropriate forum(s) for prosecution of each case not administratively settled.

(h) The Secretary may accept payment of damages in full in the settlement of civil trespass cases without resort to court action. In the absence of a court decision, the Secretary will determine the procedure and approve acceptance of any negotiated settlements.

(i) The Secretary may delegate by written agreement or contract, responsibility for detection and investigation of forest trespass to Indian tribes.

(j) Indian tribes that adopt the regulations set forth in this section, conformed as necessary to tribal law, shall have concurrent civil jurisdiction to enforce section 307 of the National Indian Forest Resources Management Act of 1990 and this section against any person.

(1) The Secretary shall acknowledge said civil jurisdiction over trespass, upon:

(i) Receipt of a formal tribal resolution documenting the tribe's adoption of this section; and

(ii) Notification of the ability of the tribal court system to properly adjudicate forest trespass cases, including a statement that the tribal court will enforce the Indian Civil Rights Act or a tribal civil rights law that contains provisions for due process and equal protection that are similar to or stronger than those contained in the Indian Civil Rights Act.

(2) Where an Indian tribe has acquired concurrent civil jurisdiction on trespass cases as set forth in paragraph (j)(1) of this section, the Secretary shall, upon request of the tribe, defer prosecution of forest trespasses to the tribe. Where said deferral is not requested, the designated Bureau of Indian Affairs forestry trespass official shall coordinate with the forest trespass official of each tribe the exercise of concurrent tribal and Federal trespass jurisdiction as to each

trespass. Such officials shall review each case, determine in which forums to recommend bringing an action, and promptly provide their recommendation to the officials responsible for initiating cases in the selected forum(s).

(3) The Secretary may rescind deferral to prosecute civil trespass:

(i) Upon determination by a court of competent jurisdiction that the tribal court has not adhered to the due process and equal protection requirements of the Indian Civil Rights Act in forest trespass cases, and the failure of the tribal court to meet said requirements; or

(ii) If no determination is forthcoming after one year from a tribal court's action in a forest trespass case that the Secretary determines violates said requirements.

(4) If the Secretary determines that said rescission is justified, he or she shall provide written notice to the chief judge of the tribal judiciary of the findings justifying said rescission and of steps needed to remedy violations of due process and/or equal protection. If said steps are not taken within 60 days, the Secretary may rescind deferral. The affected tribe(s) may appeal a rescission under part 2 of this Title.

**§ 163.30 Revocable road use and construction permits for removal of commercial forest products.**

(a) The Secretary may request tribes and/or other beneficial owners to sign revocable permits designating the Secretary as Agent for the landowner and empowering him or her to issue revocable road use and construction permits to users for the purpose of removing forest products.

(b) When a majority of trust interest in a tract has consented, the Secretary may issue revocable road use and construction permits for removal of forest products over and across such land. In addition, the Secretary may act for individual owners when:

(1) One or more of the individual owner(s) of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant, in total or for an interest therein, will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The whereabouts of the owner(s) of the land or an interest therein are unknown, and the owner(s) of any interests therein whose whereabouts are known or majority thereof, consent to the grant;

(3) The heirs or devisees of a deceased owner of the land or interest therein have not been determined, and the

Secretary finds the grant will cause no substantial injury to the land or any owner thereof, provided that once the heirs or devisees of the deceased owner are determined, their consent is obtained; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain the consent of the majority and finds that such grant in total or an interest therein will cause no substantial injury to the land or the owner(s), which cannot be adequately compensated for by monetary damages.

(c) Nothing in this section shall preclude acquisition of rights-of-way over Indian lands, subchapter H, 25 CFR part 169, or conflict with provisions of that part.

**§ 163.31 Insect and disease control.**

(a) The Secretary is authorized to protect and preserve Indian forest land from disease or insects (Sept. 20, 1922, Ch. 349, 42 Stat. 857). The Secretary shall consult with the authorized tribal representatives and beneficial owners of Indian forest land concerning control actions.

(b) The Secretary is responsible for controlling and mitigating harmful effects of insects and diseases on Indian forest land and will coordinate control actions with the Secretary of Agriculture in accordance with 92 Stat. 365, 16 U.S.C. 2101.

**§ 163.32 Forest development.**

Forest development pertains to forest land management activities undertaken to improve the productivity of commercial Indian forest land. The program shall consist of reforestation, timber stand improvement projects, and related investments to enhance productivity of commercial forest land with emphasis on accomplishing on-the-ground projects. Forest development funds will be used to re-establish, maintain, and/or improve growth of commercial timber species and control stocking levels on commercial forest land. Forest development activities will be planned and executed using benefit-cost analyses as one of the determinants in establishing priorities for project funding.

**§ 163.33 Administrative appeals.**

Any challenge to action taken by an approving officer or subordinate official exercising delegated authority from the Secretary shall be exclusively through administrative appeal or as provided in the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended). Such appeal(s) shall be filed in accordance with the

provisions of 25 CFR part 2, Appeals from administrative actions, and any other applicable regulations covering appeals and shall not stay any action unless otherwise directed by the Secretary.

**§ 163.34 Environmental compliance.**

Actions under the regulations in this part will be reviewed for potential environmental impacts, under the National Environmental Policy Act of 1969, applicable Council on Environmental Quality Regulations, and using for guidance applicable tribal laws and regulations.

**§ 163.35 Indian forest land assistance account.**

(a) At the request of a tribe's authorized representatives, the Secretary may establish, within the tribe's trust fund account, a forest land assistance account.

(b) Deposits into the account shall be credited either to forest transportation or to general forest land management activities.

(c) Deposits into the account may include:

(1) Funds from non-Federal sources related to activities on or for the Indian forest land of such tribe's reservation;

(2) Donations or contributions;

(3) Unobligated forestry appropriations for the tribe;

(4) User fees; and

(5) Funds transferred under Federal interagency agreements if otherwise authorized by law.

(d) For purposes of § 163.35(c)(3), unobligated forestry appropriations shall consist of those balances which remain unobligated at the end of the fiscal year(s) for which such funds are appropriated and which are identified in the finance system by the tribe's organization code, and organization code is a unique number assigned to each tribe in the finance system.

(e) Funds in the Indian forest land assistance account plus any interest or other income earned thereon shall remain available until expended and shall not be available to otherwise offset Federal appropriations for the management of Indian forest land.

(f) Funds in the forest land assistance account shall be used only for forest land management activities on the reservation for which the account is established.

(g) Funds in a tribe's forest land assistance account shall be expended in accordance with a plan approved by the tribe and the Secretary.

(h) In addition to the annual audit performed by the Secretary to oversee trust funds, the Secretary may, where

circumstances warrant, at the request of the tribe, or upon the Secretary's own volition, conduct audits of the forest land assistance accounts and shall provide the results of such audits to the tribe(s).

#### § 163.36 Tribal forestry program financial support.

(a) The Secretary shall maintain a program to provide financial support to qualifying tribal forestry programs. A qualifying tribal forestry program is an organization or entity established by a tribe for purposes of carrying out forest land management activities. Such financial support shall be made available through the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

(b) The authorized tribal representatives of any category 1, 2, or 3 reservation with an established tribal forestry program or with an intent to establish such a program for the purpose of carrying out forest land management activities may apply and qualify for tribal forestry program financial support. Reservation categories, as determined by the Secretary, are defined as:

(1) Category 1 includes major forested reservations comprised of more than 10,000 acres of trust or restricted commercial timberland or having more than a one million board foot harvest of forest products annually.

(2) Category 2 includes minor forested reservations comprised of less than 10,000 acres of trust or restricted commercial timberland and having less than a one million board foot harvest of forest products annually, or whose forest resource is determined by the Secretary to be of significant commercial timber value.

(3) Category 3 includes significant woodland reservations comprised of an identifiable trust or restricted forest area of any size which is lacking a timberland component, and whose forest resource is determined by the Secretary to be of significant commercial woodland value.

(c) A group of tribes which has either established or intends to establish a cooperative tribal forestry program to provide forest land management services to their reservations may apply and qualify for tribal forestry program financial support. For purposes of financial support under this provision, the cooperative tribal forestry program and the commercial forest acreage and annual allowable cut which it represents may be considered as a single reservation.

(d) Before the beginning of each Federal fiscal year, tribes applying to qualify for forestry program financial support shall submit application packages to the Secretary which:

(1) Document that a tribal forestry program exists or that there is an intent to establish such a program;

(2) Describe forest land management activities and the time line for implementing such activities which would result from receiving tribal forestry program financial support; and

(3) Document commitment to sustained yield management.

(e) Tribal forestry program financial support shall provide professional and technical services to carry out forest land management activities and shall be based on levels of funding assistance as follows:

(1) Level one funding assistance shall be equivalent to a Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional forty (40) percent of the annual salary for such a position to pay for fringe benefits and support costs;

(2) Level two funding assistance shall be equivalent to an additional Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional forty (40) percent of the annual salary for such a position to pay for fringe benefits and support costs; and

(3) Level three funding assistance shall be based on equal distribution of remaining funds among qualifying applicants.

(f) Determination of qualification for level of funding assistance shall be as follows:

(1) A funding level qualification value shall be determined for each eligible applicant using the following formula. Such formula shall only be used to determine which applicants qualify for level one funding assistance. Acreage and allowable cut data used in the formula shall be as maintained by the Secretary. Eligible applicants with a funding level qualification value of one (1) or greater shall qualify for level one assistance.

#### Funding Level Qualification Formula

$$\left[ \frac{S \times CA}{Tot. CA} + \frac{S \times AAC}{Tot. AAC} \right] \times 1000$$

where:

CA=applicant's total commercial Indian forest land acres;

Tot. CA=national total commercial Indian forest land acres;

AAC=applicant's total allowable annual cut from commercial Indian forest land acres; and

Tot. AAC=national total allowable annual cut from commercial Indian forest land acres.

(2) All category 1 or 2 reservations that are eligible applicants under § 163.36(d) are qualified and eligible for level two assistance.

(3) All category 1, 2 or 3 reservations that are eligible applicants under § 163.36(d) are qualified and eligible for level three assistance.

(g) Tribal forestry program financial support funds shall be distributed based on the following:

(1) All requests from reservations qualifying for level one funding assistance must be satisfied before funds are made available for level two funding assistance;

(2) All requests from reservations qualifying for level two funding assistance must be satisfied before funds are made available for level three funding assistance; and

(3) If available funding is not adequate to satisfy all requests at a particular level of funding, funds will be evenly divided among tribes qualifying at that level.

#### § 163.37 Forest management research.

The Secretary, with the consent of the authorized Indian representatives is authorized to perform forestry research activities to improve the basis for determining appropriate land management activities to apply to Indian forest land.

#### Subpart C—Forestry Education, Education Assistance, Recruitment and Training

#### § 163.40 Indian and Alaska Native forestry education assistance.

(a) *Establishment and evaluation of the forestry education assistance programs.*

(1) The Secretary shall establish within the Bureau of Indian Affairs Division of Forestry an education committee to coordinate and implement the forestry education assistance programs and to select participants for all the forestry education assistance programs with the exception of the cooperative education program. Such committee will be, at a minimum, comprised of a professional educator, a personnel specialist, an Indian or Alaska Native who is not employed by the Bureau of Indian Affairs, and a professional forester from the Bureau of Indian Affairs.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, shall monitor and evaluate the forestry education assistance programs to ensure there are adequate Indian and Alaska

Native foresters and forestry-related professionals to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for tribes and ANCSA Corporations. Such monitoring and evaluating shall identify the number of participants in the intern, cooperative education, scholarship, and outreach programs; the number of participants who completed the requirements to become a professional forester or forestry-related professional; and the number of participants completing advanced degree requirements.

(b) *Forester intern program.*

(1) The purpose of the forester intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native forest land. In keeping with this purpose, the Bureau of Indian Affairs in concert with tribes and Alaska Natives will work:

- (i) To obtain the maximum degree of participation from Indians and Alaska Natives in the forester intern program;
- (ii) To encourage forester interns to complete an undergraduate degree program in a forestry or forestry-related field; and
- (iii) To create an opportunity for the advancement of forestry and forestry-related technicians to professional resource management positions with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, subject to the availability of personnel resource levels established in agency budgets, shall establish and maintain in the Bureau of Indian Affairs at least 20 positions for the forester intern program. All Indians and Alaska Natives who satisfy the qualification criteria in § 163.40(b)(3) may compete for such positions.

(3) To be considered for selection, applicants for forester intern positions must meet the following criteria:

- (i) Be eligible for Indian preference as defined in 25 CFR part 5, subchapter A;
- (ii) Possess a high school diploma or its recognized equivalent;
- (iii) Be able to successfully complete the intern program within a three year maximum time period; and
- (iv) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that such a letter of acceptance will be acquired within 90 days.

(4) The Bureau of Indian Affairs shall advertise vacancies for forester intern positions semi-annually, no later than the first day of April and October, to accommodate entry into school.

(5) Selection of forester interns will be based on the following guidelines:

(i) Selection will be on a competitive basis selecting applicants who have the greatest potential for success in the program;

(ii) Selection will take into consideration the amount of time which will be required for individual applicants to complete the intern program;

(iii) Priority in selection will be given to candidates currently employed with and recommended for participation by the Bureau of Indian Affairs, a tribe, a tribal forest enterprise or ANCSA Corporation; and

(iv) Selection of individuals to the program awaiting the letter of acceptance required by § 163.40(b)(3)(iv) may be canceled if such letter of acceptance is not secured and provided to the education committee in a timely manner.

(6) Forester interns shall comply with each of the following program requirements:

(i) Maintain full-time status in a forestry related curriculum at an accredited post-secondary school having an articulation agreement which assures the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related degree program at a baccalaureate-granting institution accredited by the American Association of Universities;

(ii) Maintain good academic standing;

(iii) Enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, the recommending tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program; and

(iv) Report for service with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation during any break in attendance at school of more than three weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service.

(7) The education committee established pursuant to § 163.40(a)(1) will annually evaluate the performance of forester intern program participants against requirements enumerated in § 163.40(b)(6) to ensure that they are satisfactorily progressing toward completing program requirements.

(8) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an accredited post-secondary school.

(c) *Cooperative education program.*

(1) The purpose of the cooperative education program is to recruit and develop promising Indian and Alaska Native students who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional foresters and other forestry-related professionals by the Bureau of Indian Affairs, a tribe, a tribal forest enterprise or ANCSA Corporation.

(2) The program shall be operated by the Bureau of Indian Affairs Division of Forestry in accordance with the provisions of 5 CFR 213.3202(a) and 213.3202(b), and the provisions of chapter 308 of the Federal Personnel Manual.

(3) To be considered for selection, applicants for the cooperative education program must meet the following criteria:

(i) Meet eligibility requirements stipulated in chapter 308 of the Federal Personnel Manual;

(ii) Be accepted into or enrolled in a course of study at a high school offering college preparatory course work, an accredited institution which grants baccalaureate degrees in forestry or forestry-related curriculums or a post-secondary education institution which has an articulation agreement with a college or university which grants baccalaureate degrees in forestry or forestry-related curriculums. The articulation agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related degree program at the baccalaureate-granting institution.

(4) Cooperative education steering committees established at the field level shall select program participants based on eligibility requirements stipulated in § 163.40(c)(3) without regard to applicants' financial needs.

(5) A recipient of assistance under the cooperative education program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a recommending tribe, tribal forest enterprise or ANCSA Corporation for one year in return for each year in the program.

(6) The Secretary shall pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for participation in the cooperative education program.

(d) *Scholarship program.*

(1) The Secretary is authorized, within the Bureau of Indian Affairs Division of Forestry, to establish and

grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) The education committee established pursuant to § 163.40(a)(1) shall select program participants based on eligibility requirements stipulated in §§ 163.40(d)(5), 163.40(d)(6) and 163.40(d)(7) without regard to applicants' financial needs or past scholastic achievements.

(3) Recipients of scholarships must reapply annually to continue funding beyond the initial award period. Students who have been recipients of scholarships in past years, who are in good academic standing and have been recommended for continuation by their academic institution will be given priority over new applicants for selection for scholarship assistance.

(4) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and, therefore, may be subject to yearly changes.

(5) Preparatory scholarships are available for a maximum of two and one-half academic years of general, undergraduate course work leading to a degree in forestry or forestry-related curriculums and may be awarded to individuals who meet the following criteria:

(i) Must possess a high school diploma or its recognized equivalent; and

(ii) Be enrolled and in good academic standing or accepted for enrollment at an accredited post-secondary school which grants degrees in forestry or forestry-related curriculums or be in a post-secondary institution which has an articulation agreement with a college or university which grants baccalaureate degrees in forestry or forestry-related curriculums. The articulation agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry-related curriculum at the baccalaureate-granting institution.

(6) Pregraduate scholarships are available for a maximum of three academic years and may be awarded to individuals who meet the following criteria:

(i) Have completed a minimum of 55 semester hours towards a baccalaureate degree in a forestry or forestry-related curriculum; and

(ii) Be accepted into a forestry or forestry-related baccalaureate degree-

granting program at an accredited college or university.

(7) Graduate scholarships are available for a maximum of three academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in forestry or forestry-related fields.

(8) A recipient of assistance under the scholarship program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for one year for each year in the program.

(9) The Secretary shall pay all scholarships approved by the education committee established pursuant to § 163.40(a)(1), for which funding is available.

**(e) Forestry education outreach.**

(1) The Secretary shall establish and maintain a forestry education outreach program within the Bureau of Indian Affairs Division of Forestry for Indian and Alaska Native youth which will:

(i) Encourage students to acquire academic skills needed to succeed in post-secondary mathematics and science courses;

(ii) Promote forestry career awareness;

(iii) Involve students in projects and activities oriented to forestry related professions early so students realize the need to complete required pre-college courses; and

(iv) Integrate Indian and Alaska Native forestry program activities into the education of Indian and Alaska Native students.

(2) The program shall be developed and carried out in consultation with appropriate community education organizations, tribes, ANCSA Corporations, and Alaska Native organizations.

(3) The program shall be coordinated and implemented nationally by the education committee established pursuant to § 163.40(a)(1).

**(f) Postgraduate studies.**

(1) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native foresters and forestry-related professionals working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation so that the best possible service is provided to Indian and Alaska Native publics.

(2) The Secretary is authorized to pay the cost of tuition, fees, books and salary of Alaska Natives and Indians who are employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or

ANCSA Corporation who have previously received diplomas or degrees in forestry or forestry-related curriculums and who wish to pursue advanced levels of education in forestry or forestry-related fields.

(3) Requirements of the postgraduate study program are:

(i) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a forestry or forestry-related field;

(ii) The duration of course work cannot be less than one semester or more than three years; and

(iii) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program during their course of study.

(4) Program applicants will submit application packages to the education committee established by § 163.40(a)(1). At a minimum, such packages shall contain a complete SF 171 and an endorsement, signed by the applicant's supervisor clearly stating the needs and benefits of the desired training.

(5) The education committee established pursuant to § 163.40(a)(1) shall select program participants based on the following criteria:

(i) Need for the expertise sought at both the local and national levels;

(ii) Expected benefits, both to the location and nationally; and

(iii) Years of experience and the service record of the employee.

(6) Program participants will enter into an obligated service agreement in accordance with § 163.42(a), to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program. However, the obligated service requirement may be reduced by the Secretary if the employee receives supplemental funding such as research grants, scholarships or graduate stipends and, as a result, reduces the need for financial assistance. If the obligated service agreement is breached, the Secretary is authorized to pursue collection in accordance with § 163.42(b).

**§ 163.41 Postgraduation recruitment, continuing education and training programs.**

**(a) Postgraduation recruitment program.**

(1) The purpose of the postgraduation recruitment program is to recruit Indian and Alaska Native graduate foresters and trained forestry technicians into the Bureau of Indian Affairs forestry

program or forestry programs conducted by a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary is authorized to assume outstanding student loans from established lending institutions of Indian and Alaska Native foresters and forestry technicians who have successfully completed a post-secondary forestry or forestry-related curriculum at an accredited institution.

(3) Indian and Alaska Natives receiving benefits under this program shall enter into an obligated service agreement in accordance with § 163.42(a). Obligated service required under this program will be one year for every \$5,000 of student loan debt repaid.

(4) If the obligated service agreement is breached, the Secretary is authorized to pursue collection of the student loan(s) in accordance with § 163.42(b).

(b) *Postgraduate intergovernmental internships.*

(1) Forestry personnel working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation may apply to the Secretary and be granted an internship within forestry-related programs of agencies of the Department of the Interior.

(2) Forester or forestry-related personnel from other Department of the Interior agencies may apply through proper channels for internships within Bureau of Indian Affairs forestry programs and, with the consent of a tribe or Alaska Native organization, within tribal or Alaska Native forestry programs.

(3) Forestry personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an internship within the Bureau of Indian Affairs and, with the consent of a tribe or Alaska Native organization, within a tribe, tribal forest enterprise or ANCSA Corporation.

(4) Forestry personnel from a tribe, tribal forest enterprise or ANCSA Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise or ANCSA Corporation forestry program.

(5) The employing agency of participating Federal employees will provide for the continuation of salary and benefits.

(6) The host agency for participating tribal, tribal forest enterprise or ANCSA Corporation forestry employees will provide for salaries and benefits.

(7) A bonus pay incentive, up to twenty-five (25) percent of the intern's base salary, may be provided to

intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and will be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

(c) *Continuing education and training.*

(1) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of forestry personnel employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation. This program will emphasize continuing education and training in three areas:

(i) Orientation training including tribal-Federal relations and responsibilities;

(ii) Technical forestry education; and

(iii) Developmental training in forest land-based enterprises and marketing.

(2) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, an orientation program designed to increase awareness and understanding of Indian culture and its effect on forest management practices and on Federal laws that affect forest management operations and administration in the Indian forestry program.

(3) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, a continuing technical forestry education program to assist foresters and forestry-related professionals to perform forest management on Indian forest land.

(4) The Secretary shall implement, within the Bureau of Indian Affairs Division of Forestry, a forest land-based forest enterprise and marketing training program to assist with the development and use of Indian and Alaska Native forest resources.

#### **§ 163.42 Obligated service and breach of contract.**

(a) *Obligated service.*

(1) Individuals completing forestry education programs with an obligated service requirement may be offered full time permanent employment with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If such employment is not offered within the 90 day period, the student shall be relieved of obligated service requirements. Not less than 30 days prior to the commencement of employment, the employer shall notify

the participant of the work assignment; its location and the date work must begin. If the employer is other than the Bureau of Indian Affairs, the employer shall notify the Secretary of the offer for employment.

(2) Qualifying employment time eligible to be credited to fulfilling the obligated service requirement will begin the day after all program education requirements have been completed with the exception of the forester intern program which includes the special provisions outlined in § 163.40(b)(6)(iv). The minimum service obligation period shall be one year of full-time employment.

(3) The Secretary or other qualifying employer reserves the right to designate the location of employment for fulfilling the service obligation.

(4) A participant in any of the forestry education programs with an obligated service requirement who receives a degree may, within 30 days of the degree completion date, request a deferment of obligated service to pursue postgraduate or post-doctoral studies. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for deferral. The Secretary may grant such a request, however, deferments granted in no way waive or otherwise affect obligated service requirements.

(5) A participant in any of the forestry education programs with an obligated service requirement may, within 30 days of the date all program education requirements have been completed, request a waiver of obligated service based on personal or family hardship. The Secretary may grant a full or partial waiver or deny the request for waiver. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for waiver.

(b) *Breach of contract.* Any individual who has participated in and accepted financial support under forestry education programs with an obligated service requirement, and who does not accept employment or unreasonably terminates such employment by their own volition will be required to repay financial assistance as follows:

(1) Forester intern program—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the forester intern received while occupying the intern position. The amount of salary paid to the individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise, or ANCSA Corporation, shall not be included in this total.



(2) Cooperative education program—Amount plus interest equal to the sum of all tuition, books, and fees that the individual received under the cooperative education program.

(3) Scholarship program—Amount plus interest equal to scholarship(s) provided to the individual under the scholarship program.

(4) Postgraduation recruitment program—Amount plus interest equal to the sum of all the individual's student loans assumed by the Secretary under the postgraduation recruitment program.

(5) Postgraduate studies program—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the individual received while in the postgraduate studies program. The amount of salary paid to that individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, a tribal enterprise, or ANCSA Corporation, shall not be included in this total.

(c) *Adjustment of repayment for obligated service performed.*

Under forestry education programs with an obligated service requirement, the amount required for repayment will be adjusted by crediting time of obligated service performed prior to breach of contract toward the final amount of debt.

#### Subpart D—Alaska Native Technical Assistance Program

##### § 163.60 Purpose and scope.

(a) The Secretary shall provide a technical assistance program to ANCSA Corporations to promote sustained yield management of their forest resources and, where practical and consistent with the economic objectives of the ANCSA Corporations, promote local processing and other value-added activities. For the purpose of this subpart, technical assistance means specialized professional and technical help, advice or assistance in planning, and providing guidance, training and review for programs and projects associated with the management of, or impact upon, Indian forest land, ANCSA Corporation forest land, and their related resources. Such technical assistance shall be made available through contracts, grants or agreements entered into in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

(b) Nothing in this part shall be construed as: Affecting, modifying or increasing the responsibility of the United States toward ANCSA corporation forest land, or affecting or

otherwise modifying the Federal trust responsibility towards Indian forest land; or requiring or otherwise mandating an ANCSA corporation to apply for a contract, grant, or agreement for technical assistance with the Secretary. Such applications are strictly voluntary.

##### § 163.61 Evaluation committee.

(a) The Secretary shall establish an evaluation committee to assess and rate technical assistance project proposals. This committee will include, at a minimum, local Bureau of Indian Affairs and Alaska Native representatives with expertise in contracting and forestry.

##### § 163.62 Annual funding needs assessment and rating.

(a) Each year, the Secretary will request a technical assistance project needs assessment from ANCSA corporations. The needs assessments will provide information on proposed project goals and estimated costs and benefits and will be rated by the evaluation committee established pursuant to § 163.61 for the purpose of making funding recommendations to the Secretary. To the extent practicable, such recommendations shall achieve an equitable funding distribution between large and small ANCSA corporations and shall give priority for continuation of previously approved multi-year projects.

(b) Based on the recommendations of the evaluation committee, the Secretary shall fund such projects, to the extent available appropriations permit.

##### § 163.63 Contract, grant, or agreement application and award process.

(a) At such time that the budget for ANCSA corporation technical assistance projects is known, the Secretary shall advise the ANCSA corporations on which projects were selected for funding and on the deadline for submission of complete and detailed contract, grant or agreement packages.

(b) Upon the request of an ANCSA corporation and to the extent that funds and personnel are available, the Bureau of Indian Affairs shall provide technical assistance to ANCSA corporations to assist them with:

- (1) Preparing the technical parts of the contract, grant, or agreement application; and
- (2) Obtaining technical assistance from other Federal agencies.

#### Subpart E—Cooperative Agreements

##### § 163.70 Purpose of agreements.

(a) To facilitate administration of the programs and activities of the

Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements between Indian tribes and any agency or entity within the Department. Such cooperative agreements include engaging tribes to undertake services and activities on all lands managed by Department of the Interior agencies or entities or to provide services and activities performed by these agencies or entities on Indian forest land to:

(1) Engage in cooperative manpower and job training and development programs;

(2) Develop and publish, cooperative environmental education and natural resource planning materials; and

(3) Perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

(b) The Secretary may enter into such agreements when he or she determines the public interest will be benefited. Nothing in § 163.70(a) shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

##### § 163.71 Agreement funding.

In cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities or equipment without regard to the provisions of 31 U.S.C. 3324, relating to the advance of public moneys.

##### § 163.72 Supervisory relationship.

In any agreement authorized by the Secretary, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise, as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of 28 U.S.C. 2671 through 2680, and 5 U.S.C. 8101 through 8193.

#### Subpart F—Program Assessment

##### § 163.80 Periodic assessment report.

The Secretary shall commission every ten years an independent assessment of Indian forest land and Indian forest land management practices under the guidelines established in § 163.81.

(a) The initial assessment shall, subject to the availability of appropriations, be completed no later than November 28, 1993. Subsequent



assessments shall be conducted in the first year of each decade (e.g., 2000, 2010, etc.) and shall be completed within 24 months of their initiation date. Each assessment shall be initiated no later than November 28 of the designated year.

(b) Except as provided in § 163.83, each assessment shall be conducted by a non-Federal entity knowledgeable of forest management practices on Federal and private land. Assessments will evaluate and compare investment in and management of Indian forest land with similar Federal and private land.

(c) Completed assessment reports shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

#### § 163.81 Assessment guidelines.

Assessments shall be national in scope and shall include:

(a) An in-depth analysis of management practices on, and the level of funding by management activity for, specific Indian forest land compared with similar Federal and private forest land;

(b) A survey of the condition of Indian forest land, including health and productivity levels;

(c) An evaluation of the staffing patterns, by management activity, of forestry organizations of the Bureau of Indian Affairs and of Indian tribes;

(d) An evaluation of procedures employed in forest product sales administration, including preparation, field supervision, and accountability for proceeds;

(e) An analysis of the potential for streamlining administrative procedures, rules and policies of the Bureau of Indian Affairs without diminishing the Federal trust responsibility;

(f) A comprehensive review of the intensity and utility of forest inventories and the adequacy of Indian forest land management plans, including their compatibility with other resource inventories and applicable integrated resource management plans and their ability to meet tribal needs and priorities;

(g) An evaluation of the feasibility and desirability of establishing or revising minimum standards against which the adequacy of the forestry program of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian forest land can be measured;

(h) An evaluation of the effectiveness of implementing the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended) in regard to the Bureau of Indian Affairs forestry program;

(i) A recommendation of any reforms and increased funding and other resources necessary to bring Indian forest land management programs to a state-of-the-art condition; and

(j) Specific examples and comparisons from across the United States where Indian forest land is located.

#### § 163.82 Annual status report.

The Secretary shall, within 6 months of the end of each fiscal year, submit to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes, a report on the status of Indian forest land with respect to attaining the standards, goals and objectives set forth in approved forest management plans. The report shall identify the amount of Indian forest land in need of forestation or other silvicultural treatment, the quantity and value of timber available for sale, offered for sale, and sold, and the acres on which silvicultural treatments were accomplished for each area covered by an approved forest management plan.

#### § 163.83 Assistance from the Secretary of Agriculture.

The Secretary of the Interior may ask the Secretary of Agriculture, through the Forest Service, on a nonreimbursable basis, for technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by § 163.80.

Dated: October 21, 1993.

**Marshall M. Cutsforth,**

*Acting Assistant Secretary—Indian Affairs.*

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